INDEX.

Subjects.

Page

Notice to petitioner..... 1
Acknowledgment of service..... 2
Statement of case..... 4-9
Brief of the argument.....10-13
Petitioner was denied no constitutional right, and there is no federal question involved.....14-21
The trial and Supreme courts of Missouri decided that the case of New York Life Insurance Company v. Dodge, 246 U. S. 357, is not applicable in this case.....21-26
The trial court and Supreme Court of Missouri held the case of New York Life Insurance Company v. Head, 234 U. S. 149, inapplicable in this case.....26-28

Alphabetical List of Authorities Cited.

American Ins. Co. v. King Lumber Co., 250 U. S. 11 (cases cited, including Head case)..... 12
Ayres v. Bank, 79 Mo. 421..... 17
Bailey v. American Deposit Co., 52 App. Div. (N. Y.) 402, affirmed 165 N. Y. 672..... 13
Cole v. Knickerbocker Life Ins. Co., 63 How. Pr. (N. Y.) 442..... 13
Equitable Life Assur. Soc. v. Clements, 140 U. S. 226 10
Haas v. Mutual Life Ins. Co., 90 Neb. 808 (Ann. Cas. 1913B, 919 and note).....11, 12, 14

Insurance Co. v. Stratton, 216 S. W. (Ky. C. A.) 416 16
Lange v. New York Life Ins. Co., 254 Mo. 488 (citing and following Mutual Life Ins. Co. v. Hill, 193 U. S. 551, and other decisions by this Honorable Court) 11
Laws of New York, 1897, Chap. 218, Sec. 16..... 13
Laws of New York, 1913, Sec. 16, Chap. 304, Vol. I, pp. 553-5..... 13
Liebing v. Mutual Life Ins. Co., 269 Mo. 509.... 12
Liebing v. Mutual Life Ins. Co., 226 S. W. 897— 10, 21, 26
Liverpool etc. Steam Co. v. Phoenix Ins. Co., 129 U. S. 397..... 10
Lukens v. International Life Ins. Co., 269 Mo. 574 (citing and following New York Life Ins. Co. v. Head, 234 U. S. 149)..... 11
Manhattan Life Ins. Co. v. Cohen, 139 S. W. (Tex. Civ. App.) 51..... 15
Mutual Life Ins. Co. v. Cohen, 179 U. S. 262.....11, 26
Mutual Life Ins. Co. v. Hathaway, 106 Fed. 815.. 11
Mutual Life Ins. Co. v. Hill, 193 U. S. 551..... 11
New York Life Ins. Co. v. Cravens, 178 U. S. 389. 10
New York Life Ins. Co. v. Dodge, 246 U. S. 357 .....12, 21, 23
New York Life Ins. Co. v. Head, 234 U. S. 149...12, 26
Rose v. Mutual Life Ins. Co., 240 Ill. 45..... 11
Toplitz v. Bauer, 161 N. Y. 325..... 13
Union Pacific Railway Co. v. Wyler, 158 U. S. 285. 13
Wiggins' Ferry Co. v. Railroad, 11 Fed. 381, and note, affirmed 108 U. S. 18..... 10

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Petitioner, vs. MARY S. LIEBING, Respondent.	No. 712.

NOTICE TO PETITIONER.

To the Above-Named Petitioner:

Please take notice, that on Monday, March 7th, 1921, on the convening of the Supreme Court of the United States, on that day the respondent herein will submit for the consideration of said Court a brief opposing petitioner's petition for a writ of certiorari, which brief is hereinafter set forth.

JAMES J. O'DONOHOE,
Attorney for Respondent.

We do hereby acknowledge to have received copies of the foregoing notice, together with copies of the brief referred to therein this 28th day of February, 1921.

S. W. FORDYCE,
JOHN H. HOLLIDAY,
THOMAS W. WHITE,
W. H. WOODWARD,
FREDERICK L. ALLEN,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
Petitioner,
vs.
MARY S. LIEBING,
Respondent.
No. 712.

RESPONDENT'S BRIEF OPPOSING PETITIONER'S PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

May It Please the Court:

Since we believe the facts in this case are erroneously stated in petitioner's petition, we desire to make a brief statement of the facts here.

STATEMENT.

Frederick W. V. Blees, a naturalized citizen of the United States and a resident and citizen of the State of Missouri, in November, 1901, made written application to the petitioner's Macon, Missouri office for the policy in suit, and on or about the 31st day of December, 1901, the policy applied for was delivered to him at Macon, Missouri, by Dwight H. Payson, petitioner's Macon representative, to whom Blees then and there paid the first annual premium (Abs., pp. 94-95).

PART OF POLICY.

The policy stipulated that it was issued upon the condition that on its delivery the first annual premium shall be paid (Abs., p. 73). Under the caption "Loans," the policy stipulates:

> "After this contract shall have been in force three full years, **within sixty days after written application, and upon the assignment of this contract as security, the company will, in conformity with its rules as then in force,** loan amounts within the limits of the cash surrender value, with interest in advance, at the rate of 5 per cent per annum; provided, (1) that the deposits be fully made to the end of the contract year in which

the loan falls due; (2) **that in any settlement of this contract all outstanding indebtedness hereon to the company must be paid''** (Abs., pp. 75-76).

Material Part of Stipulation.

By stipulation entered into by the parties it is, in part, agreed:

"That on or about the 7th day of October, 1904, Fred W. V. Blees and Mary S. Blees, his wife now Mary S. Liebing, plaintiff herein), signed the certain loan agreement heretofore received in evidence in this case in the City of Macon and State of Missouri, and delivered said loan agreement so signed, together with the policy in suit No. 1207072, to one Dwight H. Payson, then a soliciting agent of the defendant at Macon, Missouri; that said Dwight H. Payson, on or about the said 7th day of October, 1904, forwarded said loan agreement and policy to F. N. Cheney, the then manager of the defendant company's St. Louis office, and that said F. N. Cheney transmitted said loan agreement and policy to the Home Office of the defendant company in the City of New York on or about the 8th day of October, 1904, and that said loan agreement and policy were received at the defendant company's office in the City of New York and State of New York on the 10th day of October, 1904.

"That on or about the 12th day of October, 1904, the defendant transmitted a check on the American Exchange National Bank of New York in the sum of four thousand seven hundred ninety

dollars and fifty cents ($4,790.50), payable to Frederick W. V. Blees and Mary S. Blees, being the balance due said Frederick W. V. Blees on the loan of nine thousand five hundred fifty dollars ($9,550) made by said Frederick W. V. Blees and Mary S. Liebing on the policy in suit, after the deduction of four thousand two hundred ninety-one dollars and fifty cents ($4,291.50), which was applied to pay the premium due on said policy on the 29th day of September, 1904, and four hundred sixty-eight dollars ($468) interest.

That said check was by the defendant mailed from its home office in the City of New York and State of New York to the City of St. Louis and State of Missouri, addressed to Mr. F. N. Cheney, who was defendant's then manager in charge of its St. Louis, Missouri, office.

* * * * * * *

That thereafter, on or about the —— day of October, 1904, Mr. F. N. Cheney, who was defendant's then manager in charge of its St. Louis, Missouri, office, as aforesaid, forwarded said check to Mr. Dwight H. Payson, who was defendant's then soliciting agent at Macon, Missouri, and that thereafter, on or about the —— day of October, 1904, Mr. Dwight H. Payson delivered said check to Frederick W. V. Blees, the insured (Abs., pp. 146-149, stipulation).

On or about the 18th day of October, 1904, the insured and respondent endorsed said check and the for-

mer deposited the same in the National Bank of Commerce at St. Louis.

W. B. Cowen, vice president of the bank, testified that the insured was given credit for the check by the bank and that the same was not deposited for collection.

He testified:

> "Q. **Now, if it were deposited for collection, would there be any number on it?**
>
> A. **Yes, there would.**
>
> Q. **And there is not a number on it?**
>
> A. **No, sir.**
>
> Q. **It was treated as a cash transaction between the depositor and the bank?**
>
> A. **Yes, sir"** (Abs., p. 372).

On cross-examination, the witness testified that in the event the check was not paid the bank would charge it back immediately to insured's account.

The premiums were paid at Macon to Mr. Payson, petitioner's Macon representative. And respondent was asked:

> "Q. **Did Mr. Blees or yourself have any transaction with the home office in New York?**

And she answered:

> A. **No, sir"** (Abs., p. 99).

On cross-examination, respondent was asked concerning the payment of the fourth annual premium, namely:

> "Q. **Well, wasn't the premium due September 29th, 1904, paid out of that loan?**

And she answered:

> "A. **Yes, it was agreed by both Mr. Blees and myself and Mr. Payson, first the premium was to be paid, and a year's interest in advance on the loan**" (Abs., p. 104).

The insured, after he had paid four annual deposits, discontinued the payment of further deposits, and at that time, namely, on the 29th day of September, 1905, the policy had acquired a net value under the nonforfeiture statutes of Missouri, of $11,230.83; that three-fourths thereof is $8,423.12, and deducting $4,759.50 (which is the aggregate amount applied to pay the deposit due on the 29th of September, 1904, and to pay interest on said loan and premium) leaves $3,663.62, which sum, taken as a net single premium as commanded by the Missouri nonforfeiture statute, extends the said policy from date of lapse (September 29th, 1905) for a period of four years, nine months and eighteen days (Abs., pp. 228-229).

The insured died on the 8th day of September, 1906; that is, eleven months and ten days from the

29th day of September, 1905. He died within the extended insurance period.

Neither the insured nor respondent paid the loan, which was due on the 29th day of September, 1905, but the alleged foreclosure, cancellation of the policy and appropriation of the surrender value thereof to repay the loan, did not occur, according to petitioner's answer (Abs., p. 13), until the 15th day of November, 1905, and did not occur, according to its evidence (Abs., p. 298) until December 4, 1905.

On or about the 2nd day of March, 1904, at Macon, Missouri, the insured assigned the policy to respondent, a native born American citizen, her father having been born in Richmond, Virginia (Abs., p. 93).

BRIEF OF THE ARGUMENT.

I.

No constitutional question is raised in this case for constitutional inhibition is directed against legislative acts and not against possible erroneous judgments.

And failure to apply the law of a sister state is not a refusal to give full faith and credit to the judicial proceedings of another state within the meaning of the Constitution. For the full faith and credit clause only relates to the validity and effect of judgments in one state when proved in another.

Wiggins' Ferry Co. v. Railroad, 11 Fed. 381, and note; affirmed 108 U. S. 18.

II.

The facts in this case establish and the trial and Supreme Courts of Missouri have found that the loan agreement here is a Missouri contract (Liebing v. Mutual Life Ins. Co., 226 S. W. 897). The ruling of the Missouri courts, under the facts, is, we think, correct.

New York Life Insurance Co. v. Cravens, 178 U. S. 389;

Equitable Life Assurance Society v. Clements, 140 U. S. 226;

Liverpool etc. Steam Co. v. Phoenix Insurance Co., 129 U. S. 397;

Haas v. Mutual Life Insurance Co., 90 Neb. 808 (Ann. Cas. 1913B, 919 and note);

Lukens v. International Life Insurance Co., 269 Mo. 574 (citing and following New York Life v. Head, 234 U. S. 149).

III.

Unlike the Head and Dodge cases, neither the policy nor loan agreement here is made subject to the New York laws. Hence, the rule successfully urged by petitioner in the following cases applies:

Mutual Life Insurance Co. v. Cohen, 179 U. S. 262;

Mutual Life Insurance Co. v. Hill, 193 U. S. 551;

Rose v. Mutual Life Insurance Co., 240 Ill. 45;

Mutual Life Insurance Co. v. Hathaway, 106 Fed. 815.

Of course the same rule obtains in Missouri.

Lange v. New York Life Insurance Co., 254 Mo. 488.

(Citing and following Mutual Life Ins. Co. v. Hill, 193 U. S. 551, and other decisions of this Honorable Court).

IV.

The laws of New York cannot, without denying rights to respondent guaranteed under the State and Federal Constitutions, be applied in this case, for the authority of the New York laws cannot be extended

into the State of Missouri so as to control contracts there made between citizens thereof, and a foreign corporation transacting business therein.

New York Life Insurance Co. v. Head, 234 U. S. 149;
New York Life Insurance Co. v. Dodge, 246 U. S. 357;
American Fire Insurance Co. v. King Lumber Co., 250 U. S. 11 (cases cited, including Head case).

The petitioner is not entitled to say that because it issued the check in New York that that constitutes the contract and controls and governs the legal status of the whole transaction.

Haas v. Mutual Life Insurance Co., 90 Neb. 808 (Ann. Cas. 1913B, 919 and note).

V.

The petitioner urged that the loan agreement was a Missouri contract, and based its defenses thereon until that law proved ineffectual by an adverse decision of the Missouri Supreme Court (Liebing v. Mutual Life Insurance Co., 269 Mo. 509). Thereupon, petitioner dropped from its answer its defenses based upon Missouri law and sought, for the first time, to withdraw itself, not by policy or policy loan agreement, but by answer from the limitation of Missouri

law by invoking the New York law. This is a clear departure from "law to law", which has often been disallowed by this Honorable Court.

Union Pacific Railway Co. v. Wyler, 158 U. S. 285.

VI.

The New York law pleaded in petitioner's answer, namely: New York Laws, 1897, Chapter 218, Section 16 makes Missouri law applicable (Abs., pp. 15-16).

But the law was changed in 1913, after the policy in suit was issued, allowing the loan to be satisfied "as provided in the loan agreement" (Section 16, Chap. 304, Vol. I, pp. 553-555, Laws of New York, 1913).

And the alleged foreclosure, cancellation and confiscation of the policy here, under the facts in this case, are invalid under the laws of New York.

Toplitz v. Bauer, 161 N. Y. 325;
Bailey v. American Deposit Co., 52 App. Div. (N. Y.) 402, affirmed 165 N. Y. 672;
Cole v. Knickerbocker Life Insurance Co., 63 How. Pr. (N. Y.) 442.

ARGUMENT.

PETITIONER WAS DENIED NO CONSTITUTIONAL RIGHT AND THERE IS NO FEDERAL QUESTION INVOLVED.

I.

Is the loan agreement a New York contract as contended for by petitioner, or is it a Missouri contract as found by the trial and Supreme Courts of Missouri?

Respondent contends that said loan agreement is a Missouri contract. She testified (Abs., p. 99) that neither the insured nor respondent ever had any transaction with the home office in New York. The evidence, too, shows that the insured, respondent and petitioner met at Macon, Missouri, and then and there entered into the loan agreement, a photographic copy of which is between pages 264-5 of the abstract. The petitioner was represented by Dwight H. Payson, its Macon representative.

Petitioner urged the same view as it does here in the somewhat celebrated case of Haas v. Mutual Life Insurance Company, 90 Neb. 808 (Ann. Cas. 1913B, 919 and note), but the Court rejected same and held that:

> "Where a resident of Nebraska who there owned a paid-up policy of insurance in the de-

fendant company, made an application at his home in this state for a new policy to an agent of defendant who was authorized to transact business for it in this state, and submitted to a medical examination, **and delivered to the agent here his paid-up policy with a paper authorizing and directing the company to apply from the surrender value of the former policy the amount of the first two premiums, and pay the remainder to him in cash, and afterwards, without any communication between the applicant and the home office, the agent in this state delivered the new policy and check for the balance due on the surrender value, the contract was completed in Nebraska, and is to be governed by the law of this state, and not by those of the state of New York where the home office of the defendant is.**"

In Manhattan Life v. Cohen, 139 S. W. (Tex. Civ. App.) 51, the Court held that:

> "**Where life insurance policies belonging to a resident of Texas were assigned and delivered to the assignee's agent in Texas, the validity of the assignment was governed by the Texas laws and not by the laws of Georgia where the assignee resided.**"

But if Mr. Payson was not clothed with authority to enter into the loan contract with the insured and respondent, then it was not consummated until the check was handed by Mr. Payson to the insured, for

up to that time, it was subject to recall by petitioner. Thus, in Ins. Co. v. Stratton, 216 S. W. (Ky. C. A.) 416, the Court held that:

> **"Payment by check of an overdue premium is not made until the check is received at the office of the company, and cashed and applied to the extinguishment of the premium debt."**

We think, however, the fact that Mr. Payson had authority to consummate on behalf of the petitioner the pledge and loan agreement in Missouri is scarcely debatable. But that is not the question, for he did actually consummate them there.

Loan Agreement.

The loan agreement commences:

"This agreement made this 12th day of October, 1914, between The Mutual Life Insurance Company, of New York, party of the first part, hereinafter called the Company, and Frederick W. V. and Mary S. Blees, parties of the second part," so that beyond question this agreement was made at Macon on the 12th day of October, 1904.

Then again, the agreement says:

"The Company agrees to loan to the parties of the second part the sum of ninety-five hundred and fifty dollars, apportioned as follows": Four thousand two hundred ninety-one dollars and fifty cents was then

and there agreed (not in New York, but in Macon) to be applied to pay an annual premium and $468.00 was then and there (not in New York, but in Macon) agreed to be applied to pay a year's interest in advance, and $4,790.50 was then and there (not in New York, but in Macon) agreed to be paid to the insured by **"Company's check."**

The respondent testified, **"It was agreed by both Mr. Blees and myself and Mr. Payson, first the premium was to be paid, and a year's interest in advance on the loan"** (Abs., p. 104).

The check for the balance of the loan as the stipulation (Abs., pp. 147-9), shows was mailed from New York to St. Louis and by the St. Louis office mailed to Mr. Payson, and by Mr. Payson delivered to the insured who thereafter deposited said check in the National Bank of St. Louis, not for collection, but as a cash transaction (Abs., pp. 371-2). And here we may observe that the fact that the bank in case it failed to collect the check had the right to charge the amount of it back against the account of insured, could not prevent the bank's acquiring title to the check by endorsement of insured, for this right to charge back affects neither title nor absolute ownership of the bank.

In the leading Missouri case of Ayres v. Bank, 79 Mo. 421, the Court held that:

"If paper be deposited in or forwarded to a bank for collection, and in pursuance of a prearranged mode of dealing the bank immediately places the amount to the credit of the depositor, and the depositor thereupon draws or is entitled to draw against the same as cash, this works a transfer of title, so that the depositor cannot afterward claim the paper: **and it is immaterial that if the paper is not paid the bank has the right to charge it back.**"

Then, again, the agreement says:

"**The receipt of the foregoing amount as a loan is hereby acknowledged upon the pledge as hereinafter set forth of Policy No. 1207072 in said Company.**" Then it was agreed that the loan should be repaid at the Company's Home Office in New York on the 29th day of September, 1905.

The thing pledged, namely, the policy, was delivered (not in New York, but in Macon) to Mr. Payson, the petitioner's Macon representative.

The loan agreement also says:

"**In consideration of the amount of said loan the parties of the second part hereby assign, transfer and set over all of their right, title and interest in and to said Policy No. 1207072 issued by said Company on the life of Frederick W. V. Blees together with any and all moneys which may be or become payable under the same, to the Company as collateral security for the payment of said loan with interest.**"

Then it stipulates that in the event of default in the payment of the loan on the date named in the loan agreement, the Company is, by the loan agreement, **"authorized at its option, without notice and without demand of payment, to cancel said policy, and apply the customary cash surrender consideration then allowed by the Company"**, which it fixes at $9,550.00.

The evidence shows that the minimum value of the policy, not to mention its speculative value, and without considering its distributive share of surplus was $13,170, or $3,620 in excess of the loan.

Finally, it concludes:

> **"In witness whereof, the said parties have executed these presents the day and year first above written."**

Then, under the insured's signature is, **"Macon, Mo."**, and, under the respondent's signature, is, **"Macon, Mo."**, and to the right of the word "witness" are the signatures of "D. H. Payson", the petitioner's Macon representative, and "G. Eugene Lane." No other signatures appear thereon.

We have, therefore, a contract which expressly says that it is made on the 12th day of October, 1904, by which the Company agreed, not in the future, but then and there, to loan a given sum of money, which given sum of money was, not in the future, but then

and there apportioned; that the policy was, not in the future, but then and there pledged, assigned, transferred and set over to defendant for the loan, and the parties executed the loan agreement, not in the future, but at that time, namely, the 12th day of October, 1904.

Indeed, there was nothing to be done in the future but to deliver to the insured a check for $4,790.50 in payment of the balance of the loan, and this was attended to, not by the New York office but by Mr. Payson of the Macon office.

The company's check for the balance was delivered to the insured, not in New York, and not by the New York office, but at Macon, by Mr. Payson of the Macon office. This check was accepted and cashed by the insured, not in New York, but in Missouri.

Hence, if the loan agreement in this case is not a Missouri contract, we cannot conceive how a Missouri contract can be made, for it is certain that everything was agreed on in Macon on the 12th day of October, 1904, and the thing pledged was then and there delivered to the pledgee.

The petitioner wrote the loan agreement and it used words in the present tense, and when it sent its representative, Mr. Payson, with an agreement reading that way, namely, in the present tense, and dated and signed at Macon, it was not an offer to enter into a

contract that might or might not be accepted, but it was a contract entirely accepted and executed.

II.

The trial and Supreme Courts of Missouri decided that the case of New York Life Insurance Company v. Dodge, 246 U. S. 357, is not applicable in the instant case (Liebing v. Mutual Life Ins. Co., 226 S. W. 897).

And, we think, that ruling is correct, for by the terms of the policy in the Dodge case, application for the loan was required to be made in writing to the New York office. The requirement reads: "**Application for any loan must be made in writing to the Home Office of the company**" (New York Life v. Dodge, supra, l. c. 368).

Blees, under his policy, was not required to apply to the New York office for his loan and he did not do so. He applied to the Macon office and had all his transactions with that office.

Pursuant to the terms of his policy Dodge made application for his loan, not to a Missouri office, but to the New York office, and he did not deliver his policy to the insurer in Missouri, as Blees did, but forwarded it with his application, to the New York office for deposit there.

In the Dodge case the policy loan agreement says that the loan was made pursuant to the provisions of

the policy. And Dodge was required also to give his **"assent to the terms of the policy loan agreement,"** paragraph 5 of which reads:

Paragraph 5 of Loan Agreement.

> **"5. That the application for said loan was made to said company at its home office in the City of New York, was accepted, the money paid by it, and this agreement made and delivered there; that said principle and interest are payable at said home office; and that this contract is made under and pursuant to the laws of the State of New York, the place of said contract being said home office of said company" (New York Life v. Dodge, supra, l. c. 371).**

As has been seen, Blees did not make application for his loan to the New York office. Neither did he agree that the loan agreement was there accepted nor the money paid there.

Quite the contrary, for it is not disputed that the loan agreement was made in Missouri; that whatever money changed hands was paid to Blees at Macon, Missouri, by Mr. Payson of the Macon office. No money was paid to Dodge.

And there is no suggestion in the loan agreement that it was **"made under and pursuant to the laws of the State of New York"**, nor any understanding that the place of said loan agreement was the home office.

Dodge gave instructions to the home office, which reads:

"New York Life Insurance Company,
346 and 348 Broadway, New York.
Re Policy No. 2054961.

"Please deduct from the cash loan of $1,350.00 applied for on Nov., 1906, on the security of the above policy, an amount sufficient to pay present loan and prem. and int. to Oct., '07.

Josiah B. Dodge,
Leo F. Dodge."

(New York Life v. Dodge, supra, l. c. 371, 372).

Blees gave his instructions to Mr. Payson, the petitioner's Macon representative.

There is not a single fact in the case at bar similar to those in the Dodge case unless the facts on which this Honorable Court decided that the Dodge policy was a Missouri contract.

In the instant case the policy stipulates:

"After this contract shall have been in force three full years, within sixty days after written application and upon assignment of this contract as security, the company will, in conformity with its rules as then in force, loan amounts within the limits of the cash surrender value, with interest in advance, at the rate of 5 per cent per annum."

Hence, the right of Blees to the loan and the duty of the company to make it, the amount thereof, the

rate of interest to be charged therefor were provided for in the policy. All that Blees had to do to secure his loan was to apply for it at any office, and when he did apply to the company at its Macon office, it was bound, by its contract, to grant it without any application to the home office, and if the petitioner, after application made at its local office, refused to make the loan, Blees could have compelled petitioner, under the contract, to grant it.

And, as has been seen, the application for the loan was made and the policy assigned in Missouri. The transaction should have then been considered closed, for the local office should have paid the money, having the power and authority to receive the premiums from the insured in Missouri, it should also be considered as having authority to pay the loan in cash to the insured at Macon.

The petitioner did make the loan through its Macon office, and there is no suggestion either in the application for the policy, or in the policy, or in the loan agreement, or in the company's letters, or in the company's answers (except the last answer) that the New York laws were applicable.

In the Dodge case application for the policy was made in Missouri, which application was accepted by the insurer at its home office in New York. The policy was issued in New York, but delivered to Dodge in Missouri, and this Honorable Court held that the

Dodge policy was a Missouri contract, and controlled by Missouri law. Why? Because both the first act, namely, application for the policy, and the last act, namely, delivery of the policy, occurred in Missouri. Such, too, is the situation here, even under the petitioner's theory. For the first act, namely, application for the loan, and the last act, namely, notice of acceptance of loan agreement (if acceptance was necessary and that the agreement was not previously closed in Missouri) and the actual delivery of the petitioner's check by Mr. Payson, petitioner's Macon agent, to Blees, all occurred in Missouri, and, besides, the check was cashed in Missouri.

Moreover, Blees was not obliged to accept the petitioner's check, for he could have insisted on cash. The policy is not a check one. It is a **"gold coin"** contract. But he did accept the check in lieu of gold coin. Where? In Missouri. And his acceptance was the last act which closed the loan transaction. It was not completed before, unless, as respondent believes, the transaction was completed at Macon when the loan agreement was signed and the policy delivered.

It was quite different in the Dodge case, for there was no money paid to Dodge. Dodge's loan on which his policy was forfeited was not sufficient to pay off the prior loan and annual premium then due.

With much confidence we assert that no case can be found deciding that the law of the place where the

first and the last acts were performed were not applicable and controlling.

It has repeatedly been decided by this Honorable Court that where, as here, the contract is made by a New York company in another state, such contract is not subject to the New York laws, unless the contract so provides (Mutual Life v. Cohen, 179 U. S. 262).

In the case at bar there is no stipulation either in the policy or in the loan agreement making the New York laws an integral part thereof as was done in the Dodge case, and hence it cannot be imputed that the parties intended to make the New York laws applicable or controlling.

III.

The trial court and Supreme Court of Missouri held the case of New York Life Insurance Company v. Head, 234 U. S. 149, inapplicable in this case (Liebing v. Mutual Life Ins. Co., 226 S. W. 897).

Respondent submits that the ruling of said Missouri courts is correct for the reason, amongst others, that the policy and loan agreement in the Head case were in the same language as those in the Dodge case. And what respondent has hereinbefore said concerning the inapplicability of the Dodge case applies to the Head case. Since the Head case has been decided by this

Honorable Court, it has been tried in Kansas City, Missouri, and a verdict direct in favor of the company, which was on the 31st day of December, 1921, affirmed by the Supreme Court of Missouri, by an opinion which, doubtless, will soon appear in the advance sheets of the Southwestern Reporter. The Missouri Supreme Court in that opinion distinguished the Head case from the case at bar. And again pronounced the loan agreement in the instant case a Missouri contract.

In the Head case the loan agreement was made in New Mexico, and this Honorable Court decided that Missouri had no right to extend its authority beyond its border so as to control a loan agreement made in New Mexico. In the instant case the loan agreement was made in Macon, Missouri, and upon the authority of the Head case, respondent contends that the State of New York has no right to extend its authority beyond its borders so as to control contracts made in Macon, Missouri. Respondent may well ask: "If the laws of Missouri cannot be extended into New Mexico or New York, how can the laws of New York be extended into Missouri so as to there control a loan agreement, which, beyond question, had its situs in Missouri?"

The wisdom of the rule laid down in the Head case is manifest, for state laws should have no force or effect beyond the territorial limits of the state enacting them.

Petitioner was denied no constitutional right and there is no federal question involved.

Wherefore, it is respectfully submitted that the petitioner's petition for a writ of certiorari to review the decision of the Supreme Court of Missouri should be denied.

Respectfully submitted,

JAMES J. O'DONOHOE,

Attorney for Respondent.